

LITIGATION ROSTER

SPECIAL TAXES

DECEMBER 2008

**Special Taxes
December 2008**

NEW CASES

Case Name

Court/Case Number

NONE

CLOSED CASES

Case Name

Court/Case Number

Employers Depot, Inc.

Sacramento Superior Court 03AS05773

Please refer to the case roster for more detail regarding new and closed cases

Special Taxes
LITIGATION ROSTER
December 2008

ANVARI, ALI v. State Board of Equalization of California

San Francisco Superior Court Case No. CPF-08-508935

Filed – 05/02/08

BOE's Counsel

Karen Yiu

BOE Attorney

Dana Flanagan-McBeth

Plaintiff's Counsel

Barzin Barry Sabahat

Anchor Law Group, APC

Issue(s): Was the Notice of Determination of Underground Storage Tank Maintenance Fees properly issued and were the subsequent levy actions taken by the Board appropriate. (Health and Safety Code sections [25299.41](#), [25284](#); Revenue and Taxation Code sections [50109](#), [50136](#), and [50113.1](#)).

Audit/Tax Period: 1/1/97 – 12/6/97

Amount: \$40,196.22

Status: On December 19, 2008, the court sustained BOE's demurrer without leave to amend. Pending appeal.

CALIFORNIA DISTRIBUTORS ASSOCIATION, et al. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-80000082

Filed – 11/12/08

BOE's Counsel

Bob Asperger

BOE Attorney

Sharon Brady Silva

Plaintiff's Counsel

Amy L. Silverstein

Silverstein & Pomerantz LLP

Issue(s): Was the tax rate on tobacco products set properly for the 2008/09 fiscal year in determining the wholesale cost of tobacco ([Revenue and Tax Code sections 30123, 30126, 30131.2, 30131.5](#)).

Audit/Tax Period: 2008-2009

Amount: Unspecified

Status: Hearing on plaintiff's Motion for Peremptory Writ of Mandate is set for January 23, 2009.

CA FARM BUREAU FEDERATION I, et al. v. CA State Water Resources Control Board, et al.

California Supreme Court Case No. S150518

Filed – 04/13/04

Sacramento Superior Court Case No. 04CS00473

BOE's Counsel

Court of Appeal, Third Appellate District Case No. C050289

Molly Mosley

Plaintiffs' Counsel

BOE Attorney

David A. Battaglia, Alan N. Bick

Renee Carter

Gibson, Dunn & Crutcher LLP

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending scheduling of oral argument.

CA FARM BUREAU FEDERATION II, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS00538

Filed – 01/13/05

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION III, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS00651

Filed – 04/26/06

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION IV, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 07CS00485

Filed – 02/11/08

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Filed – 06/12/08

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Elizabeth Mann, Jeffrey N. Goldberg

McDermott, Will & Emery LLP

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on plaintiffs’ Motion for Summary Adjudication of Issues and on BOE’s Motion for Summary Judgment is scheduled for January 27, 2009.

EQUILON ENTERPRISES LLC, et al. v. California State Board of Equalization

Sacramento Superior Court Case No. 05AS02406

Filed – 06/01/05

Court of Appeal, Third Appellate Dist. No. C059079

BOE's Counsel

Molly Mosley

BOE Attorney

Carolee Johnstone

Plaintiffs' Counsel

Thomas H. Steele, Pilar M. Sansone

Morrison & Forrester LLP

Issue(s): Validity of the Childhood Lead Poisoning Prevention fee ([Health and Safety Code sections 105275-105310](#)) as it applies to Equilon Enterprises LLC, et al.

Audit/Tax Period: 2002

Amount: \$3,910,359.10

Status: Trial court judgment was entered on April 8, 2008 in favor of defendants. Equilon’s Notice of Appeal was filed June 4, 2008. Preparation of the record on appeal is continuing.

GREYHOUND LINES, INC. v. California Board of Equalization

Sacramento Superior Court Case No. 07CS00054

Filed – 01/12/07

BOE's Counsel

Jeff Rich

BOE Attorney

Renee Carter

Plaintiff's Counsel

William D. Taylor, Eli R. Makus

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05

Amount: \$295,583.04

Status: Trial preparation. Discovery continues.

MORNING STAR COMPANY v. The State Board of Equalization, et al.

Sacramento Superior Court Case No. 34-2008-00005600-CU-MC-GDS

Filed – 03/06/08

Plaintiff's Counsel

Brian C. Leighton, Richard Todd Luoma
Attorneys at Law

BOE's Counsel

Molly Mosley
BOE Attorney
Mike Llewellyn

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 01/01/03-12/31/05

Amount: \$38,698.92

Status: BOE's answer was filed May 12, 2008.

NORTHERN CA WATER ASSOCIATION I, et al. v. State Water Resources Control Board, et al.

California Superior Court Case No. S150518

Filed – 12/17/03

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending the scheduling of oral arguments.

NORTHERN CA WATER ASSOCIATION, II, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION, III, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION, IV, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION, V, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders

Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

PARMAR, ASHOK V., et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC379013

Filed – 10/11/2007

Plaintiffs' Counsel

Marty Dakessian, Aleen L. Khanjian

Dakessian & Associates, PLC

BOE's Counsel

Ron Ito

BOE Attorney

Dana Flanagan-McBeth

Issue(s): Whether the BOE issued the Notice of Determination to the correct entity and whether plaintiff intentionally evaded payment of excise taxes as a distributor defined under [Revenue and Taxation Code sections 30008 and 30009](#).

Audit/Tax Period: 12/16/93-03/08/95

Amount: \$87,647.00

Status: On November 26, 2008, the court issued its tentative ruling in favor of plaintiffs. Plaintiffs' Proposed Statement of Decision and Proposed Judgment were served December 30, 2008. BOE has until January 14, 2009 to file objections.

SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California

San Francisco Superior Court Case No. CPF-06-506789

Filed – 11/15/06

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey

Renne, Sloan, Holtzman, Sakai LLP

BOE's Counsel

Llewellyn/Graybill

BOE Attorney

Llewellyn/Graybill

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status: Civil proceedings are stayed pending the rule-making process. The Office of Administrative Law (OAL) approved the Board's regulatory changes on June 10, 2008, and sent them to the Secretary of State. The new regulations, adding clarification to the definition of "distilled spirits", are operative October 1, 2008. Industry has challenged the validity of the regulations, in the case known as *Diageo-Guinness USA, Inc. v. BOE*, reported above.

SHAITRIT, ASHER v. California State Board of Equalization

San Diego Superior Court Case No. 37-2008-00094283

Plaintiffs' Counsel

Frederick C. Phillips

Phillips, Haskett & Ingwalson

Filed – 11/15/06

BOE's Counsel

Leslie Branman Smith

BOE Attorney

Gregory Day

Issue(s): The issue in this case is whether plaintiff, a licensed distributor of cigarettes, purchased and distributed unstamped cigarettes subject to the Cigarette and Tobacco Products Tax Law (Revenue and Taxation Code section [30000](#) et seq.).

Audit/Tax Period: 5/1/99 – 5/31/01

Amount: \$157,871.09

Status: BOE's Answer and Cross-Complaint were filed December 17, 2008.

SILVERS, STEPHEN F., et al. v. State Board of Equalization, et al.

Los Angeles Superior Court Case No. BC388468

Plaintiffs' Counsel

William K. Hanagami

The Hanagami Law Firm

Filed – 04/04/08

BOE's Counsel

Diane Shaw

BOE Attorney

Renee Carter

Issue(s): Whether BOE has a duty and obligation to assess insurance taxes against Lexington Insurance Company, a Delaware Corporation and non-admitted insurer ([Insurance Code section 1760, et seq. and 1763.1](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on defendants' Motion for Summary Judgment and Summary Adjudication of Issues is set for March 12, 2009. Final Status Conference and Mandatory Settlement Conference are scheduled for April 3, 2009. Trial is set for April 13, 2009.

SMILAND PAINT COMPANY, et al. v. California Department of Health Services, et al.

Sacramento Superior Court Case No. 01CS01318

Filed – 09/14/01

Plaintiffs' Counsel

William M. Smiland, William Chase Ahders
Smiland & Khachigian

BOE's Counsel

William L. Carter
BOE Attorney
Mike Llewellyn

Issue(s): Whether the Childhood Lead Poisoning Prevention (CLLP) fee under the Childhood Lead Poisoning Prevention Act of 1991 ([Health and Safety Code sections 105275–105310](#)) are properly imposed on plaintiff who never manufactured or distributed lead-based products.

Audit/Tax Period: None

Amount: \$2,400,000.00

Status: Civil proceedings are stayed pending bankruptcy.

SPRINT COMMUNICATIONS COMPANY, L.P. v. State Board of Equalization

San Francisco Superior Court Case No. CGC-06-455982

Filed – 09/07/06

Plaintiff's Counsel

Richard N. Wiley
Attorney at Law

BOE's Counsel

Wang/Standen
BOE Attorney
Carolee Johnstone

Issue(s): Whether the BOE appropriately applied the Emergency Telephone Users Surcharge ([Revenue and Taxation Code section 41001 et seq.](#)) to certain charges Sprint bills to its California customers.

Audit/Tax Period: 12/01/97-04/30/00

Amount: \$2,289,936.82

Status: Oral argument at the trial was held November 14, 2008 – pending decision.

U.S. SMOKELESS TOBACCO BRANDS INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC-07-463592

Filed – 05/22/07

Plaintiff's Counsel

Amy L. Silverstein, Edwin P. Antolin
Silverstein & Pomerantz LLP

BOE's Counsel

Julian O. Standen
BOE Attorney
Sharon Brady Silva

Issue(s): [Revenue & Taxation Code section 30123](#) requires distributors of tobacco products to pay an excise tax on distribution of tobacco products based on the wholesale cost of the products. Plaintiff purchased the product from an affiliated manufacturing corporation owned by the same parent company. Plaintiff contends that the taxable wholesale cost should be based on its price to purchase from the manufacturer, rather than its sales price to distributors, which it previously used to calculate the tax base.

Audit/Tax Period: 01/94-11/96

Amount: \$725,977.90

Status: Trial held September 9, 2008, September 22, 2008 and September 24, 2008. Judge to enter interim proposed decision, with oral argument to be held in February 2009.

ULTRAMAR, INC. v. S. Kimberly Belshe, et al.
USDC, Central Dist. CA Case No. CV 04-6468 MRP

Plaintiff's Counsel

Richard E. Nielsen

Pillsbury, Winthrop, Shaw, Pittman LLP

Filed – 08/04/04

BOE's Counsel

Elisa Wolfe

BOE Attorney

Carolee Johnstone

Issue(s): Ultramar, Inc., a paint manufacturer, contends that certain regulations issued with respect to the Childhood Lead Poisoning Prevention (CLPP) fee ([Health and Safety Code sections 105275 – 105310](#)) should be declared invalid and unconstitutional and that the BOE and Department of Public Health should be enjoined from enforcing the CLPP program and collecting and assessing the CLPP fee against Ultramar.

Audit/Tax Period: 1991-1999 and 2001

Amount: \$6,348,189.19

Status: The lawsuit was stayed by the District Court on July 14, 2005, after an abstention and sovereign immunity (11th amendment) motion was heard by the court.

**SPECIAL TAXES
CLOSED CASES
LITIGATION ROSTER
December 2008**

EMPLOYERS DEPOT, INC. v. The State Board of Equalization

Sacramento Superior Court Case No. 03AS05773

Plaintiff's Counsel

Peter J. Celeste

Professional Law Corporation

Filed – 10/16/03

BOE's Counsel

Amy J. Winn

BOE Attorney

Mike Llewellyn

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 1997-2001

Amount: Unspecified

Disposition: Case settled. Dismissal entered December 29, 2008.

DISCLAIMER

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